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Environment

Army Corps Redefines Wetlands Mitigation

By Cat Lazaroff

WASHINGTON, DC, November 13, 2001 (ENS) - A new U.S. Army Corps of Engineers policy regarding how developers will compensate for destroying wetlands could lead to a loss of wetlands nationwide, environmentalists warn. The policy, unveiled Friday, would allow developers to offset losses of wetlands on one site by protecting wetlands, or even dry land, elsewhere.

American wetlands are losing ground.
(Photo courtesy USFWS)



Five of the country's foremost conservation groups expressed outrage over a Corps Regulatory Guidance Letter on wetlands mitigation released late Friday. The groups charge that, without public notice or coordination with other federal agencies, the Corps has ignored the national goal of achieving "no net loss" of wetlands.

That goal was established during the first Bush administration, and has been a guiding principle of the national wetlands regulatory program ever since.

"This arrogant move by the Corps demonstrates the agency's complete lack of respect for the public, other federal agencies, and most of all for our country's natural resources," said Julie Sibbing, the National Wildlife Federation's (NWF) wetlands legislative representative.

The Corps says the guidance letter reinforces the national goal, stating, "the concepts embodied in the guidance ... are intended to fully support the national no overall net loss policy for wetlands and to provide a basis for formulating decisions that will more effectively and fully mitigate impacts to other aquatic resources, such as

flowing streams."

The Regulatory Guidance Letter, dated October 31, sets out new Corps' policy regarding wetlands mitigation, or compensation for destroyed wetlands. Mitigation generally involves the construction of new wetlands to replace those destroyed by development activities.



Wetlands help prevent flooding in coastal areas
(Two photos courtesy U.S. Environmental Protection Agency)

The Corps is supposed to place highest priority on avoiding harm to wetlands, rather than mitigating damage after it has occurred. But conservation groups charge that the Corps often overlooks avoidance and allows destruction of wetlands, based on speculative promises of

mitigation.

The Corps says the guidance letter does not affect the Corps' process for evaluating permit applications, and in fact, requires consistent evaluation of mitigation plans.

Robin Mann, chair of the Sierra Club wetlands committee, says the Corps' new policy sets up an "anything goes approach" to wetland replacement. The policy allows for wetland mitigation to consist of preservation or enhancement of existing wetlands, small buffer strips along streams, upland areas, ponds and other waters, or simply deepening an existing wetlands for swimming or fishing.

"None of these types of 'mitigation' can compensate for the loss of natural wetlands and will contribute to a continued net loss of our nation's valuable wetlands," argued Mann.

The Corps notes that because regulatory guidance letters are used for internal guidance and management, there is no requirement for the coordination process appropriate for administrative rulemaking. The Corps of Engineers is solely responsible for making the case by case mitigation decisions - weighing amount and type of mitigation - required as compensation for impacts to aquatic resources.

Regulatory guidance letters "are developed jointly or in coordination with other federal agencies when the subject matter or the policies being provided require their involvement," noted the Corps in a response to the conservation groups' criticisms. "This was not the case with the guidance on compensatory mitigation"

Wetlands come in many forms. This bog is a common feature of northern regions



The guidance letters are normally issued as a result of "evolving policy, judicial decisions, and changes to federal regulations," the Corps said. Regulatory guidance letters are used "only to interpret or clarify existing regulatory program policy, but do provide mandatory guidance to Corps district offices."

The Corps has come under increased criticism over the past year for its failure to ensure that compensatory mitigation adequately replaces the functions and acreage lost when wetlands are allowed to be destroyed. The General Accounting Office (GAO) published a study last spring which criticized the Corps' use of certain third party mitigation schemes.

The National Academy of Science (NAS) also published a report last spring that found that Corps' mitigation policy was not providing for "no net loss" of wetlands within the regulatory program and that serious improvements were needed.

While the Corps claims that the new guidance letter is responsive to recommendations of the National Academy of Science study, the conservation groups say that only a few of the NAS recommendations are incorporated into the new policy, the GAO study is not mentioned and several weakening policy changes are included that were not recommended by either study.

"It is bizarre that the Corps proposes to weaken their inadequate program further, given that recent studies by the National Academy of Sciences, GAO and the Corps itself detail the widespread failure of the Corps' current mitigation policies to adequately protect wetlands and achieve the goal of "no net loss," said Daniel Rosenberg, an attorney with the Natural Resources Defense Council. "Apparently, when it comes to wetland protection, there is no success like failure for the Army Corps."

The Corps notes that the GAO's recommendations persuaded the Corps to require that development permits identify the party specifically responsible for the success of mitigation projects.



Wetlands like the Copper River Delta in Alaska can support thousands of nesting waterfowl (Photo courtesy National Wildlife Federation)

"All permits that require compensatory mitigation will contain a provision that specifies the party responsible for planning, accomplishing and maintaining the mitigation project," states the new regulatory guidance letter.

According to the Corps, the new regulatory guidance letter provides standards and definitions for mitigation where none existed before. It also can "benefit the environment by requiring better, more enforceable mitigation plans from permit applicants. The result: more environmentally sound mitigation projects," said the Corps.

But Howard Fox of Earthjustice argues that, "if this document were truly protective of wetlands and streams, the Corps wouldn't have felt the need to rush it onto the street without any public input. Refusing to allow the public a chance to point out the problems with the Corps' approach won't make those problems go away."

In April, the Bush Administration pledged that it would continue to take responsible steps to ensure the protection of wetlands.

"Either the Corps didn't get the memo, or the Administration's policies regarding wetlands protection have been reversed without notice to the public," said Rosenberg.

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